JD(SF)–07–04
Mill Creek, WA

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
SAN FRANCISCO BRANCH OFFICE

ETHAN ENTERPRISES, INC.

and Case 19-CA-28877

DISTRICT COUNCIL #5, INTERNATIONAL
OF PAINTERS AND ALLIED TRADES,
AFL-CIO

Daniel Sanders Esq., Seattle, WA,
for the General Counsel.

J. Patrick Brown, Esq. (McKay Huffington),
Seattle, WA, for Respondent.

Richard H. Robblee, Esq., (Rinehart and Robblee),
Seattle, WA, for the Union.

DECISION

Statement of the Case

JAY R. POLLACK, Administrative Law Judge: I heard this case in trial at Seattle, Washington, on December 4, 2003. On August 26, 2003, District Council #5, International Union of Painters and Allied Trades, AFL-CIO (the Union) filed the charge alleging that Ethan Enterprises, Inc., (Respondent) committed certain violations of Section 8(a)(5) and (1) of the National Labor Relations Act, as amended (29 U.S.C. Section 151 et seq., herein called the Act). On October 29, 2003, the Union filed an amended charge against Respondent. On October 31, 2003, the Regional Director for Region 19 of the National Labor Relations Board issued a complaint and notice of hearing against Respondent, alleging that Respondent violated Section 8(a)(5) and (1) of the Act. Respondent filed a timely answer to the complaint, denying all wrongdoing. In addition Respondent alleged lack of jurisdiction, lack of due process, breach of settlement agreement [by the Union] and breach of duty of good faith and fair dealing.

The parties have been afforded full opportunity to appear, to introduce relevant evidence, to examine and cross-examine witnesses[1], and to file briefs. Upon the entire[2] record[3], from my observation of the demeanor of the witnesses,[4] and having considered the post-hearing briefs of the parties, I make the following:

Findings of Fact and Conclusions

I. Jurisdiction

Respondent denied service of the charge and amended charge. The formal documents show that the Union filed the charge on August 26, 2003. A copy was sent to Respondent by regular mail that same date. In a letter dated September 2, 2003, Respondent's president, Rebecca Johnson and Greg Tift, Respondent's executive operations manager, wrote Region 19 of the Board acknowledging receipt of the charge in Case 19-CA-28877. Respondent denied the allegations of the charge. The letter also stated "We refuse to defend ourselves against an issue that is over, it is only harassment at this point. Please close the case." Enclosed with that letter was a copy of the instant charge on which Tift had written, "There is no agreement." At the hearing, Respondent moved to dismiss the complaint based on an alleged failure to serve the charge. The motion was denied. The record clearly establishes that the charge was served on Respondent in a timely manner.

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[1] At the hearing Respondent was represented by attorney J. Patrick Brown of the Seattle law firm of McKay Huffington, PLLC. During cross examination of a witness called by the General Counsel, Brown abruptly left the hearing after an adverse ruling. Brown's departure left the Respondent without representation, legal or otherwise, at the hearing. The hearing proceeded in Brown's absence. At the conclusion of the hearing I set a time for the filing of briefs. On December 8, I notified Respondent, J. Patrick Brown and McKay Huffington of the date for the filing of briefs. Respondent did not file a brief.

[2] On December 31, 2003, the Charging Party filed a motion to correct the transcript. As the motion is unopposed, I grant the motion and incorporate the corrections as Judge's Exhibit 1.

[3] Respondent objects to the lack of discovery in this proceeding. "Pre-trial discovery, perhaps the primary source of delay in civil actions, is almost never allowed by the Board." *Emhart Industries v. NLRB*, 907 F.2d 372, 378 (2nd Cir. 1990). The Board has held that while some advantages may be gained from prehearing discovery, the fact remains that it can be productive of delay, offering, as it does, abundant opportunities for collateral disputes. The Board has held that the tradeoff reflected in the Board's Rules and Regulations is not unreasonable. See *David R. Webb Co.,* 311 NLRB 1135, 1135-1136 (1993) and cases cited therein. Neither the Constitution nor the Administrative Procedure Act confer a right to discovery in federal administrative proceedings. *Kenrich Petrochemicals, Inc. v. NLRB,* 893 F.2d 1468, 1484 (3rd Cir. 1990). *See also, NLRB v. Valley Mold Co.,* 530 F.2d 693, 695 (6th Cir.), *cert. denied,* 429 U.S. 824, 97 S.Ct. 77, 50 L.Ed.2d 86 (1976) (no due process or APA requirement); *Frilette v. Kimberlin,* 508 F.2d 205, 208 (3d Cir.1974) (in banc), *cert. denied,* 421 U.S. 980, 95 S.Ct. 1983, 44 L.Ed.2d 472 (1975) (no requirement under the APA).

Respondent's attorney would not have waived his objection to the lack of discovery by participating in the hearing. The proper course of action for attorney Brown would have been to continue to participate in the hearing and later, seek to have this precedent reviewed by an appropriate United States Court of Appeals.

[4] The credibility resolutions herein have been derived from a review of the entire testimonial record and exhibits, with due regard for the logic of probability, the demeanor of the witnesses, and the teachings of *NLRB v. Walton Manufacturing Company*, 369 U.S. 404, 408 (1962).

Respondent also denied service of the complaint. The complaint issued on October 31, 2003. The complaint was served on Respondent by regular mail and certified mail. Respondent refused to accept the certified mail and it was returned to Region 19. The regular mailed was not returned. The Region also served a copy of the complaint on Respondent's attorney J. Patrick Brown.[5] Brown filed a timely answer to the complaint denying all allegations of the complaint except the allegation that Respondent was a Washington corporation engaged in the business of selling and installing commercial floor coverings. The record establishes proper service of the complaint and that Respondent had actual knowledge of the complaint.[6]

Respondent admits that it is a State of Washington corporation, with an office and place of business in Mill Creek, Washington, where it is engaged in the business of selling and installing commercial floor coverage. Respondent denied that it was an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act. More specifically, Respondent denied that it sold goods or services in excess of $50,000 to customers who were themselves engaged in interstate commerce, by other than indirect means. In Cases 19-CA-28319, et al., Respondent stipulated that its sales to customers, who met the Board's direct standards for asserting jurisdiction over non-retail employers, were in excess of $50,000.

In this case, the evidence established that in the twelve months prior to the issuance of the complaint, Respondent sold goods and services valued in excess of $140,000 to Absher Construction at construction projects inside the State of Washington. Absher purchased and received goods valued in excess of $80,000 directly from outside the State of Washington for these construction projects. Further, Respondent sold goods and services in excess of $50,000 to Eric Hoffman Company of Washington, Inc., at construction sites within the State of Washington. Hoffman purchased and received goods and services valued in excess of $50,000 from outside the State of Washington. Accordingly, I find that Respondent meets the Board's indirect outflow standard for asserting jurisdiction over non-retail enterprises. Thus, I find Respondent is an employer engaged in commerce within the meaning of Section 2(2)(6) and (7) of the Act.

Respondent denies that the Union is a labor organization within the meaning of Section 2(5) of the Act. The Union is a District Council of local unions of the International Union of Painters and Allied Trades. Carpet, Linoleum and Soft Tile Layers Local Union No. 1238 is a local union affiliated with the Union. Employees of various contractors are members of Local 1238. These employees participate in Local 1238, which represents employees for purposes of collective bargaining. The employee-members of Local 1238 elect delegates to the Union. The

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[5] J. Patrick Brown represented Respondent at the hearing in Cases 19-CA-28319, 19-CA-28349 and 19-CA-28702, on June 23, 2003. Brown negotiated a settlement on behalf of Respondent in those cases and Greg Tift, signed that agreement at the hearing. Rebecca Johnson later signed on behalf of Respondent. Brown is also listed on Respondent's Internet web page as Respondent's legal advisor.

[6] Respondent contended that this case be dismissed or deferred because the Union seeks arbitration under the Master Labor Agreement. However, Respondent contends that it is not bound to the Master Labor Agreement. Further, Respondent has failed and refused to participate in the arbitration procedure. Deferral in a case that involves total repudiation of a collective-bargaining agreement would be contrary to Board policy. See *Oak Cliff-Golman Baking Co.,* 207 NLRB 1063, 1064 (1973) enfd. 505 F. 2d 1302 (5th Cir. 1974) cert. denied 423 U.S. 826 (1975).

Union represents employees, including the members of Local 1238, for purposes of collective bargaining. The Union is party, with various employers, to a Master Labor Agreement with Western Washington Independent Floor Covering Employers. As will be seen below, it is Respondent's failure to execute and abide by the Master Labor Agreement, which forms the basis of this case. Both the Union and Local 1238 deal with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, and other employment conditions. Accordingly, I find that the Union and Local 1238 are both labor organizations within the meaning of Section 2(5) of the Act.

II. Background and Issues

Respondent is a commercial floor covering company operating in Washington, Oregon, Arizona and California. On June 23, 2003, it entered into a settlement agreement in Cases 19-CA-28319, 19-CA-28439 and 19-CA-28702 with the Union. Pursuant to that agreement, Respondent agreed to adopt and become party to the Master Labor Agreement. It further agreed not to contest the Union's majority status. The Union agreed that Respondent would only have to pay 50% of back pay and benefits for the period from June 6, 2002 to June 23, 2003. The agreement was predicated on the trust funds specified in the labor agreement waiving certain damages for fringe benefits for the period June 6, 2002, to June 23, 2003. The Union also agreed to waive all but $75 of its initiation fee not applied to membership dues for non-member Ethan employees.

Beginning in June 2003 and continuing until the date of the hearing, the Union sought to obtain compliance with the settlement agreement. To date, Respondent has not signed nor agreed to abide by the Master Labor Agreement.

Within this factual framework, the General Counsel alleges that Respondent unlawfully refused to execute and abide by the terms of an agreed upon contract. Respondent contends that there is no contract. Secondly, Respondent contends that its employees have rejected the Union as their bargaining representative. The complaint further alleges that Respondent failed and refused to furnish the Union information relevant to collective bargaining.

III. The Facts

As stated above, on June 23, 2003, Respondent entered into an agreement to adopt and become party to the Master Labor Agreement. It further agreed not to contest the Union's majority status. On June 24, Odie Carter, a business representative for the Union, and Phillip Lindquist an organizer for the Union, visited Respondent's headquarters in an attempt to obtain a signed Labor Agreement. Gregg Tift, Respondent's executive operations manager, told the Union agents that Rebecca Johnson, Respondent's president, would not be at work that day and that Johnson had five days to sign the agreement. Carter and Lindquist then explained the trust fund forms to an office clerical.

Approximately one week later, Tift requested a copy of the Union's constitution. Carter answered that copies of the constitution were available for the employees. Tift stated that he had not found any employees who wanted the Union. Carter answered that he did not know of any who did not want the Union. Tift asked if he could pay the Union to go away and Carter answered no.

On or about July 3, Carter and Lindquist met with Respondent's employees in the presence of Tift. Carter attempted to explain the Union benefit plans to the employees. However, employees who expressed dissatisfaction with having to join the Union interrupted

Carter's presentation. After attempting to explain the Union security clause of the contract, Carter determined that he had a hostile audience and he and Lindquist left the facility.

On July 8 Carter delivered to Respondent a letter that he labeled a formal grievance. In the grievance, Carter complained that the collective-bargaining agreement had not yet been signed, the union-security clause had not been enforced, and the benefits bond had not been complied with. In addition, Carter requested the names and phone numbers of Respondent's employees. Carter further explained that the agreement contained a grievance and arbitration clause. Finally, Carter noted that if these matters were not resolved within 20 days the Union would seek arbitration.

On July 14 Carter notified Respondent that the trust plans had accepted the June 23 settlement agreement between Respondent and the Union. Carter told Tift that all the waivers required by the settlement had been accepted and that the Union was ready for the Labor Agreement. Tift said that he did not expect the trust funds to accept the settlement and he expected the settlement to be null and void. Tift told Carter "agreements are made to be broken." Carter responded, "The agreement was not made to be broken but made to be adhered to."

On July 22 Carter sent Tift and Johnson another formal grievance complaining that Respondent had not complied with "all aspects of the [June 23] agreement." The Company did not responded to either the July 8 or July 22 grievances. On July 28, Carter delivered a letter to Respondent in which he responded to a purported employee petition rejecting the Union. Carter reviewed the facts leading up to the Respondent's failure to sign the agreed upon contract. Carter stated that the Union intended to enforce the June 23 agreement and demanded that Respondent sign the Master Labor Agreement. He further demanded the names and addresses of all bargaining unit employees and records showing wages, hours and benefits paid. Finally, Carter demanded that Respondent submit to an audit by the trust funds and that Respondent schedule a grievance meeting concerning the pending grievances. A meeting was scheduled for August 20. However, Tift cancelled the meeting.

On August 5 an attorney for the trust funds wrote Respondent requesting an audit pursuant to the Master Labor Agreement. On August 6 the Union's attorney wrote Respondent in an attempt to select an arbitrator to hear the Union's grievances of July 8 and July 22. Respondent refused to accept the certified letter from the Union's attorney. However, the copy sent by regular mail was not returned.

On August 26 Carter wrote Tift and Johnson requesting an audit for the trust funds. He further requested that Respondent provide the previously requested information concerning employee names, addresses and compensation. Finally, he requested that Respondent terminate its apprenticeship program and utilize the apprenticeship program provided for in the Master Labor Agreement. That same date, the Union filed the instant charge against Respondent. On August 28 Johnson and Tift wrote the attorney for the trust funds and contended that there was "no collective Bargain [sic] agreement." The letter stated, "Please respect the wishes of our employees and please discontinue the Legal Bombardment that is being reigned on Ethan Enterprises, Inc."

On September 2 Johnson and Tift wrote the acting Regional Director complaining about the actions of Carter and Lindquist. The letter stated, inter alia, "We discount any charge the NLRB or [the Union] makes, because it is all fiction and fabricated by these two individuals." A copy of this letter was sent to the Union's attorney. That same date, Johnson and Tift wrote the acting Regional Director a letter acknowledging receipt of the charge and denying the

allegations of the charge. They requested "the Union stop, and have no further contact with our company. We refuse to defend ourselves against an issue that is over, it is only harassment at this point." Enclosed was a copy of the charge on which Tift had written, "There is no agreement."

On September 8, Johnson and Tift wrote the Union's attorney stating, "Your assault on Ethan Enterprises, Inc., needs to cease." The letter accused the Union of "harassment and threats towards the company and its employees." Finally, the letter stated, "June 24th, the 5-day deadline went and passed. The agreement was poison [sic] by local 1238 business agents. The Union has been rejected by all Ethan employees. Please discontinue your actions as this matter is closed."

On September 30, the Union's attorney wrote Respondent in an effort to select an arbitrator to hear the Union's grievances. Respondent refused the certified letter but the letter sent by registered mail was not returned. After receiving no response from the Company, on October 16, the Union's attorney again wrote Respondent regarding the selection of an arbitrator. Again the certified letter was refused but Respondent apparently received the letter by regular mail.

In October, the trust funds joined by the Union brought suit against Respondent in the United States District for the Western District of Washington for failure to make proper payments under the Master Labor Agreement. Respondent filed a counterclaim and third party complaint. That suit was pending at the time of the instant trial.

IV. Analysis and Conclusions

A. The refusal to sign the agreed upon contract

Section 8(d) of the Act explicitly requires the parties to a collective-bargaining relationship to execute "a written contract incorporating any agreement reached if requested by either party." *H. J. Heinz Co. v. NLRB*, 311 U.S. 514 (1941). It is well established that an employer's failure to reduce to writing an agreement reached with a union constitutes an unlawful refusal to bargain. *H. J. Heinz Company v. N.L.R.B.*, 311 U.S. 514 (1941). "When an oral agreement is reached as to the terms of a collective-bargaining contract, each party is obligated, at the request of the other, to execute that contract when reduced to writing, and a failure or refusal to do so constitutes" a violation of Section 8(a)(5) of the Act. *Liberty Pavilion Nursing Home*, 259 NLRB 1249 (1982); *Interprint Co.*, 273 NLRB 1863 (1985). "It is well established that technical rules of contract do not control whether a collective-bargaining agreement has been reached." *Pepsi-Cola Bottling Co. v. NLRB*, 659 F.2d 87, 89 (8th Cir. 1981). Rather, the crucial inquiry is whether there "is conduct manifesting an intention to abide and be bound by the terms of an agreement." *Capital Husting Co. v. NLRB*, 671 F.2d 237, 243 (7th Cir. 1982).

In determining whether underlying oral agreement has been reached, the Board is not strictly bound by technical rules of contract law but is free to use general contract principles adopted to the bargaining context. *Americana Healthcare Center*, 273 NLRB 1728 (1985). The burden of proof is on the party alleging the existence of the contract. *Cherry Valley Apartments*, 292 NLRB 38 (1988).

In the instant case, the General Counsel has shown that an agreement was reached, and that the document, which Respondent has refused to execute, reflected that agreement. Here the undisputed evidence establishes that the parties negotiated a settlement agreement,

which required Respondent to execute a copy of the Master Labor Agreement with the Union. Without legal justification, Respondent has refused to execute that labor agreement. First, Respondent contended that it had five days to sign the labor agreement. Next, Respondent argued that agreements are made to be broken. Later, Respondent contended that the five days had past and that the matter was concluded.

The evidence shows that the agreement was subject to the trust funds waiving certain damages on fringe benefits for the period June 6, 2002, to June 23, 2003. However, the Union gave Tift timely notice that the proper waivers had been obtained. The fact that Tift believed, or hoped, that the waivers would not materialize does not relieve Respondent of its statutory obligations. When the Union informed Respondent that the waivers had been obtained, the sole condition precedent had been removed and the labor agreement had been reached.

In *Vallejo Retail Trade Bureau*, 243 NLRB 762, 767 (1979), the administrative law judge stated, with Board approval:

> [T]he expression "meeting of the minds" in contract law does not literally require that both parties have identical subjective understandings on the meaning of material terms in the contract. Rather, subjective understandings (or misunderstandings) as to the meaning of terms, which had been asserted to are irrelevant, provided that the terms themselves are unambiguous "judged by a reasonable standard." *Pittsburgh-Des Moines Steel Company*, 202 NLRB 880, 888 (1973), and authorities cited therein. See also, e.g., *Monument Printing Co., Inc.*, 231 NLRB 1215, 1220 (1977), and authorities cited therein.

Tift never raised any disagreement with the contract as written with the Union. Rather, the alleged disagreements arose after Tift unlawfully refused to sign the contract. A contract, binding on Respondent, had been reached prior to Respondent's refusal to sign it.

As stated in Teamsters Local 287 (Reed & Graham), 272 NLRB 348 (1984), the test is whether or not applying an objective or reasonable standard, irrespective of the subjective opinions of the parties, mutual agreement on a contract was reached. Judged by a reasonable objective standard, I find that a contract was reached and that Respondent was obligated to sign it.

I find no merit to Respondent's defense that its employees rejected the Union. First, Respondent did not present any evidence that its employees did not want to be represented by the Union. A petition purportedly signed by Respondent's employees was not authenticated. Even assuming that the employee petition is authentic, the employees signed the petition more than a week after Respondent had unlawfully refused to sign the agreed upon contract. The Board has long held that an employer may not withdraw recognition from a union while there are unremedied unfair labor practices tending to cause employees to become disaffected from the union. *Olson Bodies,* 206 NLRB 779, 780 (1973). As one court has stated, a "company may not avoid the duty to bargain by a loss of majority status caused by its own unfair labor practices." *NLRB v. Willimams Enterprises,* 50 F.3d 1280, 1288 (4th Cir. 1995). In cases involving a withdrawal of recognition, "the causal relationship between the unlawful act and subsequent loss of majority support may be presumed." *Lee Lumber* 322 NLRB 175, 178 (1996), enfd. in relevant part 117 F.3d 1454 (D.C. Cir. 1997). Thus, in the instant case, the purported employee petition was tainted by Respondent's unfair labor practices. See *Jano Graphics, Inc.*, 339 NLRB No. 38 (2003). I further note that Respondent's employees did not file either a decertification petition or a deauthorization petition with the Board.

B. The Refusal to Furnish Information

In the instant case, after the unlawful refusal to execute and abide by the collective-bargaining agreement, the Union requested information relevant to the collective-bargaining process. Respondent continued to refuse certified mail from the Union. Respondent compounded its errors by failing and refusing to provide the relevant information to the Union.

Section 8(a)(5) of the Act makes it an unfair labor practice for an employer to refuse to bargain collectively with the representatives of his employees, subject to the bargaining unit provisions of Section 9(a). The duty to bargain in good faith requires an employer to furnish information requested and needed by the employees' bargaining representative for the proper performance of its duties to represent unit employees of that employer. *NLRB v. Acme Industrial Co.*, 385 U.S. 432, 437 (1967). A union's request for information regarding the terms and conditions of employment of the employees employed within the bargaining unit represented by the union, is "presumptively relevant" to the Union's proper performance of its collective-bargaining duties, *Samaritan Medical Center*, 319 NLRB 392, 397 (1995), because such information is at the "core of the employee-employer relationship," *Graphics Communications Local 13 v. NLRB*, 598 F.2d 267, 271 fn. 5 (D.C. Cir. 1959), thus it is relevant by its "very nature." *Emeryville Research Center v. NLRB*, 441 F.2d 880, 887 (9th Cir. 1971).

Therefore, an employer's statutory obligation to provide information presupposes that the information is relevant and necessary to a union's bargaining obligation vis-à-vis its representation of unit employees of that employer. *White-Westinghouse Corp.*, 259 NLRB 220 fn. 1 (1981). Whether the requested information is relevant and sufficiently important or needed to invoke a statutory obligation to provide it is determined on a case-by-case basis.

In making this determination of relevance, the Board has followed the following principles:

> Wage and related information pertaining to employees in the bargaining unit is presumptively relevant, for, as such data concerns the core of the employer-employee relationship, a union is not required to show the precise relevance of it, unless effective employer rebuttal comes forth; as to other requested data, however, such as employer profits and production figures, a union must, by reference to the circumstances of the case, as an initial matter, demonstrate more precisely the relevance of the data it desires. *Curtiss-Wright Corp. v. NLRB*, 347 F.2d 61, 69 (3d Cir. 1965), cited with approval in *Coca-Cola Bottling Co.*, 311 NLRB 424, 425 (1993).

Thus, if the requested information goes to the core of the employer-employee relationship, and the employer refuses to provide that requested information, the employer has the burden to prove either lack of relevance or to provide adequate reasons why it cannot, in good faith, supply the information. If the information requested is shown to be irrelevant to any legitimate union collective-bargaining need, however, a refusal to furnish it is not an unfair labor practice. [*Coca-Cola Bottling Co.*, 311 NLRB at 425 (citing *Emeryville Research Center v. NLRB*, 441 F.2d 880 (9th Cir. 1971)].

The standard to determine a union's right to information will be "a broad discovery type standard," which permits the union access to a broad scope of information potentially useful for the purpose of effectuating the bargaining process. *NLRB v. Acme Industrial*, 385 U.S. at 437, fn. 6; See Also, *Anthony Motor Co., Inc.*, 314 NLRB 443, 449 (1994). There only needs to be "the probability that the desired information was relevant, and that it would be of use to the union in carrying out its statutory duties and responsibilities." *Acme Industrial*, 385 U.S. at 437.

In this case, all of the information in question: employee names, addresses, phone numbers, job classifications, hours worked, rates of pay, and benefits, is presumptively relevant. As such, no showing of particular need is necessary. *Curtiss-Wright Corp.*, 347 F.2d at 69.

As to employee job classification, it is a condition of employment that is presumptively relevant information. *Millard Processing Services, Inc.*, 308 NLRB 929, 930 (1992). The same is true for rates of pay. *Dynatron/Bondo Corp.*, 305 NLRB 574, 574 (1991); see also *TEG/LVI Environmental Services, Inc.*, 328 NLRB 483 (1999), Children's Hospital of San Francisco, 312 NLRB 920 (1993).

As to names, addresses, and telephone numbers, "[t]he Union's obligation to represent employees presupposes the ability to communicate with them." *Howe K. Sipes Co.*, 319 NLRB 30, 39 (1995). It is well settled that the names, addresses, and telephone numbers are therefore presumptively relevant information. *Dynatron/Bondo Corp.*, 305 NLRB at 574; *Valley Programs*, 300 NLRB 423, 423 (1990); see, e.g., *Burkart Foam*, 283 NLRB 351 (1987), enfd. 848 F.2d 825 (7th Cir. 1988); *Tom's Ford*, 253 NLRB 888, 894, 895 (1980).

As to the wage and benefit information, the Board has found that a "[l]ist of current employees containing the names, addresses, job classifications, rates of pay and telephone numbers if any" and a "[l]ist of present job locations including site addresses" was presumptively relevant information "inasmuch as the request relates to wages, hours, and terms and conditions of employment of the unit employees. The Respondent's denial of its relevance, without more, does not raise an issue warranting a hearing." *TEG/LVI Environmental Services, Inc.*, Id.

Conclusions of Law

1. Respondent is an employer engaged in commerce and in a business affecting commerce within the meaning of Section 2(6) and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. Respondent violated Section 8(a)(5) and (1) of the Act by refusing to execute and abide by an agreed upon collective-bargaining agreement with the Union.

4. Respondent has violated Section 8(a)(1) and (5) of the Act by failing to provide the Union with relevant information concerning employee names, addresses, phone numbers, job classifications, wage rates, hours of work, and benefits.

5. Respondent's conduct in paragraphs 3 and 4 above are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found Respondent engaged in certain unfair labor practices, I shall recommend that it be ordered to cease and desist therefrom and take certain affirmative action to effectuate the purposes and policies of the Act.

The Respondent shall be ordered to execute the 2003-2004 Master Labor Agreement requested by the Union on June 24, 2003. The Respondent further shall be ordered to comply with the terms of the agreement retroactive to June 24, 2003, the effective date of the agreed-

upon collective-bargaining agreement, described above. To the extent that the Respondent has failed to comply with the terms of the above-described contract, it shall be ordered to make whole its employees for any loss of earnings and other benefits they may have suffered as a result of that failure. Also, to the extent that the Respondent has failed to make payments to any benefit funds in the amounts required by the above-described contract, it shall be ordered to make such funds whole in accordance with the terms of that contract, including paying any additional amounts applicable to such delinquent payments in accordance with *Merryweather Optical Co.*, 240 NLRB 1213, 1216 (1979). In addition, the Respondent shall reimburse unit employees for any expenses ensuing from its failure, if any, to make such required payments or contributions, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enfd. mem. 661 F.2d 940 (9th Cir. 1981). All payments to unit employees shall be computed in the manner set forth in *Ogle Protection Service*, 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987)."[7]

Upon the foregoing findings of fact and conclusions of law, and upon the entire record, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:[8]

ORDER

Respondent, Ethan Enterprises, Inc., its officers, agents, successors and assigns shall:

1. Cease and desist from:

   a. Failing and refusing to bargain collectively and in good faith with the Union, by refusing to execute the 2003-2004 Master Labor Agreement, although the terms and conditions of employment had been agreed upon.

   b. Refusing to provide the Union with requested information relevant and necessary to its responsibilities as exclusive collective-bargaining representative of Respondent's employees including names, addresses, phone numbers, job classification, hours of work, wage rates and benefits information.

   c. In any like or related manner interfering with, restraining or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act:

   a. Execute the 2003-2004 Master Labor Agreement as requested by the Union.

   b. Give retroactive effect to the terms and conditions of the collective-bargaining agreement and make whole its employees and the Union for any losses they may

[7] To the extent that an employee has made personal contributions to a fund that are accepted by the fund in lieu of the employer's delinquent contributions during the period of delinquency, the Respondent will reimburse the employee, but the amount of such reimbursement will constitute a setoff to the amount that the Respondent otherwise owes the fund.

[8] All motions inconsistent with this recommended order are hereby denied. In the event no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

have suffered by reason of the Respondent's refusal to execute the agreement, as set forth in the Remedy section of the Decision.

c. Upon request, meet and bargain with the Union as the exclusive collective bargaining representative of its employees in the appropriate bargaining unit described below with respect to rates of pay, hours of employment and other terms and conditions, and if an understanding is reached, embody such understanding in a signed agreement. The appropriate bargaining unit is:

Included: All employees as described in Respondent's collective bargaining agreement with the Union including all journeymen and apprentices, electronic pre-press operators, camera/stripper/platemakers, press operators, bindery employees and driver/helpers.
Excluded: All other employees, supervisors and guards as defined in the Act.

d. Within 14 days from the date of this order, provide the Union with the information, necessary and relevant to its status as exclusive collective bargaining representative, which the Union requested in July 2003.

e. Within 14 days after service by the Region, post copies of the attached notice marked "Appendix"[9] at its location in Mill Creek, Washington. Copies of the notice, on forms provided by the Regional Director for Region 19, after being signed by Respondent's authorized representative, shall be posted by Respondent immediately upon receipt thereof, and maintained by it for 60 consecutive days thereafter in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to ensure the notices are not altered, defaced or covered by other material. In the event that, during the pendency of these proceedings, Respondent has gone out of business or closed the facility involved in these proceedings, Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current and former employees employed by Respondent at any time since June 24, 2003.

f. Within 21 days after service by the Region, file with the Regional Director for Region 19, a sworn certification of a responsible official on a form provided by Region 19 attesting to the steps the Respondent has taken to comply herewith.

Dated: January 16, 2004, San Francisco, California.

Jay R. Pollack
Administrative Law Judge

[9] If this Order is enforced by a Judgment of the United States Court of Appeals, the words in the notice "POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD" shall read "POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD."

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

After a hearing at which all sides had a chance to give evidence, the National Labor Relations Board has found that we violated Federal labor law, Section 8(a)(5) and (1) of the National Labor Relations Act, as amended, and has ordered us to post and abide by this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities

WE WILL NOT refuse to bargain collectively with District Council #5, International Union of Painters and allied Trades, AFL-CIO by failing and refusing to sign the agreed upon Master Labor Agreement.

WE WILL NOT withdraw recognition either directly or impliedly from the Union as the exclusive collective bargaining representative of our employees in the unit described below.

WE WILL NOT refuse to provide the Union with requested information relevant and necessary to its responsibilities as exclusive collective bargaining representative of our employees including names, addresses, phone numbers, job classifications, wage and benefit information.

WE WILL NOT in any like or related manner, interfere with, restrain or coerce employees in the exercise of the rights guaranteed them in Section 7 of the Act.

WE WILL provide the Union with the information, necessary and relevant to its status as exclusive collective bargaining representative, which the Union requested in July 2003.

WE WILL sign the 2003-2004 Master Labor Agreement as requested by the Union and WE WILL give retroactive effect to the terms and conditions of the collective- bargaining agreement and make whole our employees and the Union for any losses they may have suffered by reason of our refusal to execute the agreement, with interest.

WE WILL recognize and bargain with the Union as the exclusive collective bargaining representative of our employees in the appropriate bargaining unit described below with respect to rates of pay, hours of employment and other terms and conditions. The bargaining unit is:

Ethan Enterprises' employees performing work described in the Master Labor Agreement between the Western Washington Independent Floor Covering Employers and the Union.

ETHAN ENTERPRISES, INC.

(Employer)

Dated _____ By _____

(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov.

915 Second Avenue, Federal Building, Room 2948, Seattle, WA 98174-1078
(206) 220-6300, Hours: 8:15 a.m. to 4:45 p.m.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUSTNOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THISNOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, (206) 220-6284.